

IN THE
Supreme Court of the United States

OCTOBER TERM, 1971

NO. 71-1051

PARIS ADULT THEATRE I, ET AL,
Petitioners,

v.

LEWIS R. SLATON, DISTRICT ATTORNEY
ATLANTA JUDICIAL CIRCUIT, ET AL.,
Respondents.

ON WRIT OF CERTIORARI FROM THE
SUPREME COURT OF GEORGIA

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1703

IN THE SUPREME COURT OF GEORGIA

No. 71-1051

Decided: Nov. 5, 1971

SLATON, District Attorney, Et Al.

v.

PARIS ADULT THEATER I, Et Al.**OPINION OF SUPREME COURT OF GEORGIA**

The films involved in this case are hard core pornography. Their commercial exhibition is not protected by the first amendment, and the trial court erred in refusing to enjoin their exhibition in a theater where all adult persons willing to pay the price were admitted.

HAWES, Justice. The appeal in this case is from the judgment and order of the Superior Court of Fulton County refusing a temporary injunction against the showing by the defendants, Paris Adult Theater No. 1 and Paris Adult Theater No. 2, of two allegedly obscene motion pictures. Following the procedure approved by this court in *Evans Theater Corp. v. Slaton*, 227 Ga. 377 (180 SE2d 712), and followed in *Walter, et al. v. Slaton*, 227 Ga. 676 (182 SE2d 464), and in *1024 Peachtree Corp., et al., v. Slaton* [No. 26612; decided _____]. *Lewis R. Slaton*, as District Attorney of the Atlanta Judicial Circuit, and *Hinson McAuliffe*, as Solicitor General of the Criminal Court of Fulton County, filed a complaint against the theaters and named individuals praying for a rule nisi to require the defendants, to show cause on a date certain why the motion picture films, "It All Comes Out in the End," and "Magic Mirror," should not be declared obscene and subject to be seized, and seeking in each case an

order requiring the defendants to produce the aforesaid motion picture films and that they be temporarily and permanently enjoined from exhibiting the same. The rule nisi was duly issued and served in each case, and an adversary hearing was held pursuant thereto on January 13, 1971 before a Judge of the Superior Court of Fulton County. The parties agreed to waive a jury trial and a preliminary hearing and stipulated that the judgment and order entered by the trial judge would be a final judgment and order in each case. After viewing the motion pictures and hearing the evidence, the trial judge rendered the following judgment. "The State contends that the motion pictures under review in the above actions are obscene. The titles of the films are, "It All Comes Out in the End," and "Magic Mirror." Assuming that obscenity is established by a finding that the actors cavorted about in the nude indiscriminately, then these films may fairly be considered obscene. Both films are clearly designed to entertain the spectator and perhaps, depending on the viewer, to appeal to his or her prurient interest. The portrayal of the sex act is undertaken; but the act itself is consistently only a simulated one if, indeed, the viewer can assume an act of intercourse or of fellatio is occurring from the machinations which are portrayed on the screen. Each of the films is childish, unimaginative, and altogether boring in its sameness.

"It appears to the Court that the display of these films in a commercial theater, when surrounded by requisite notice to the public of their nature and by reasonable protection against the exposure of these films to minors, is constitutionally permissible.

"IT IS THE JUDGMENT OF THIS COURT THAT the films, even though they display the human body and the human personality in a most degrading fashion, are not obscene.

"The actions against the Defendants, therefore, are dismissed.

"This 12th day of April, 1971.

Jack Etheridge, Judge,
Superior Court of Fulton County,
Atlanta Judicial Circuit."

The appeal is from this order. The grounds of enumerated error are that the court erred in declaring each of the films to be not obscene, in refusing to enjoin the defendant from exhibiting each of said motion pictures, and in dismissing the appellant's complaint against the defendants.

Appellees contend, and the judge of the superior court found that, inasmuch as the evidence in this case shows that the films which the solicitor seeks to seize are shown in a theater which carries on the front thereof the warning that it is for adults only and that "You must be 21 and able to prove it. If viewing the nude body offends you — PLEASE DO NOT ENTER," the exhibition of the films in this context is permissible and that the State cannot, without violating first amendment rights, constitutionally prohibit it. They rely in support of this position upon the case of *Stanley v. Ga.*, 394 U.S. 557, and other Federal and State cases following it. That case, however, is not authority for the position which appellees take. It dealt, not with the commercial distribution of pornography, but with the right of Stanley to possess, in the privacy of his home, pornographic films. In one of the most recent, if not *the* most recent, case decided by the Supreme Court of the United States dealing with this kind of material that court has expressly limited the scope of *Stanley* and has thereby effectively answered this contention of the appellees. *U.S. v. Reidel*, U.S. , 28 L.Ed. 2d 813, 91 S. Ct. . That case involved the distribution through the mails of an admittedly obscene publication in violation of 18 U.S.C. § 1461. The material was mailed to recipients who responded to a newspaper advertisement which required the recipient to state in his order therefor that he was 21 years of age. *Reidel* was indicted, but the trial court granted his motion to dismiss

the indictment and, upon review, the Supreme Court, in reversing that judgment, reiterated the ruling in *Roth v. U.S.*, 354 U.S. 476, 1 L. Ed.2d 1498, 77 S. Ct. 1304, that "obscenity is not within the area of constitutionally protected speech or press." In so ruling, the Supreme Court expressly held that the government could constitutionally prohibit the distribution of obscene materials through the mails, even though the distribution be limited to willing recipients who state that they are adults, and, further, that the constitutional right of a person to possess obscene material in the privacy of his own home, as expressed in *Stanley*, does not carry with it the right to sell and deliver such material. As we view the holding in the *Reidel* case, it is dispositive of the appellees' contention, and the ruling of the trial court that the showing of these films in a commercial theater under the circumstances shown in this case is constitutionally permissible. The defendants in this case were making sales and delivery of the films involved in the only practical way in which it could be done, that is, by selling to the public the right to come into their theater and view the showing of such films. No reason exists why the sale and delivery of these films should be immune to State control any more than the sale and delivery of multiple copies of an obscene book, pamphlet or magazine. Those who choose to pass through the front door of the defendant's theater and purchase a ticket to view the films and who certify thereby that they are more than 21 years of age are willing recipients of the material in the same legal sense as were those in the *Reidel* case, who, after reading the newspaper advertisements of the material, mailed an order to the defendant accepting his solicitation to sell them the obscene booklet involved there. That case clearly establishes once and for all that the sale and delivery of obscene material to willing adults is not protected under the first amendment.

Appellee also contends, and the trial judge so found, that the sexual activity depicted in these films is merely simulated, and that, being such, it is not obscene. This contention was

unhesitatingly and utterly reject. True, the activity in the films here involved is not revealed in the explicit detail embodied in the films in the Walter case. But, we held in the Evans Theater case that, "I am Curious Yellow," depicted hard core pornography. In that case, only simulated sexual activity was involved. The films in this case leave little to the imagination. It is plain what they purport to depict, that is, conduct of the most salacious character. We hold that these films are also hard core pornography, and the showing of such films should have been enjoined since their exhibition is not protected by the first amendment.

Judgment reversed. All the Justices concur.

SUPREME COURT OF GEORGIA

Atlanta, November 5, 1971

JUDGMENT OF SUPREME COURT

The Honorable Supreme Court met pursuant to adjournment.

The following judgment was rendered:

Lewis R. Slaton, District Attorney, et al. v. Paris Adult Theatre I, et al.

This case came before this court upon an appeal from the Superior Court of Fulton County; and, after argument had, it is considered and adjudged that the judgment of the court below be reversed for the reasons stated in the opinion this day filed. All the Justices concur.

BILL OF COSTS, \$30.00

**Supreme Court of the State of Georgia
Clerk's Office, Atlanta, December 20, 1971**

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia, and that Thomas E. Moran paid the above bill of costs.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Hazel E. Hallford, Deputy Clerk.

**IN THE SUPREME COURT OF
THE STATE OF GEORGIA**

No. 26631

LEWIS R. SLATON, as District Attorney, et al.,
Appellants

v.

PARIS ADULT THEATRE I, et al
Appellees.

LEWIS R. SLATON, as District Attorney, et al.,
Appellants,

v.

PARIS ADULT THEATRE II, et al
Appellees.

**MOTION FOR REHEARING
IN SUPREME COURT**

NOW COME the Appellants in the above-entitled case and file this their Motion for a Rehearing upon the following grounds:

1. The Court overlooked a stipulation in the record by the attorneys for all parties which waived a jury trial and provided for a final judgment to be rendered by the trial court judge.
2. The Court overlooked the decision of U.S. v. Wild, 422 Fed. 2d 34, certiorari denied April, 1971, which is controlling as authority in this case in that the motion pictures involved herein are hard core pornography as a matter of law and the judgment of the trial court should be reversed on this authority.

WHEREFORE, Movants pray that a rehearing be granted and the decision rendered amended accordingly.

/s/
Thomas E. Moran.

(Certificate of Service omitted in printing)

MOTION FOR REHEARING
IN SUPREME COURT

NOW COME the Appellants in the above-entitled case and file this their Motion for a Rehearing upon the following grounds:

1. The Court overlooked a stipulation in the record by the attorneys for all parties which waived a jury trial and provided for a final judgment to be rendered by the trial court judge.

2. The Court overlooked the decision of U.S. v. White, 425 Fed. 2d 34, certiorari denied April, 1971, which is controlling authority in the case in that the motion pictures involved herein are hard core pornography as a matter of law and the judgment of the trial court should be reversed on this authority.

**IN THE SUPREME COURT OF
THE STATE OF GEORGIA**

Case No. 26631

APPELLEES' PETITION FOR REHEARING

Suite 507

ROBERT EUGENE SMITH

102 West Pennsylvania Ave.

Towson, Maryland 21204

Suite 2005,

D. FREEMAN HUTTON

One Hundred Colony Square,

Atlanta, Georgia 30309

Attorneys for Appellees.

Petitioners-Appellees herein respectfully submit to the Court that:

I.

Appeal in this matter was argued before this Court and the opinion of this Court was filed on November 5, 1971, reversing the findings of the Honorable Jack Etheridge, Judge, Fulton Superior Court.

II.

This Honorable Court, in reversing the findings of the lower Court, considered and treated in the Opinion of the Court, in part, the following:

1.

"Appeal in this case is from the judgment and order of the Superior Court of Fulton County refusing a temporary

injunction against the showing by the defendants, Paris Adult Theater No. 1 and Paris Adult Theater No. 2, of two allegedly obscene motion pictures." (Emphasis Supplied.) (See page 1 of the Opinion of this Court)

"As was pointed out in *Walter v. Slaton*, *supra*, the initial hearing in this kind of proceedings presents for the judge's decision only the question of whether there is probable cause to hold the material in question to be obscene, and, therefore, whether the exhibition of a motion picture or the distribution of literature shall be *temporarily enjoined* until the ultimate question of obscenity can be passed upon by a jury." (Emphasis Supplied.) (See page 3 of the opinion of this Court)

"[A]n issue of fact as to whether the films are obscene, . . . was a question which, under our procedure, necessarily *had to be submitted to the jury upon the final determination of the case* . . ." (Emphasis Supplied.) (See page 5 of the Opinion of this Court)

4.

"As we view the holding in the *Reidel* case, it is dispositive of the Appellees' contention, and the ruling of the trial court that the showing of these films in a commercial theater under the circumstances shown in this case is constitutionally permissible . . . that case [*Reidel*] clearly establishes once and for all that the sale and delivery of obscene material to willing adults is not protected under the First Amendment." (See pages 7 and 8 of the Opinion of this Court.)

"[I]t is apparent that a *temporary injunction* was necessary in order to protect the jurisdiction of the court and to prevent the case from becoming moot. It follows that the trial judge erred in denying the *temporary injunction*." (Emphasis supplied.) (See page 11 of the Opinion of this Court)

III.

This Court rendered its decision predicated upon a factual assumption which was incorrect and that factual assumption was that the matter presented to the lower court judge related to the issuance of a temporary, or interlocutory, injunction, which in truth and fact Counsel for both Appellants and Appellees, at the trial level, stipulated that the hearing before the lower court was in the nature of a final determination of all the matters presented. See paragraph 1 of the Stipulation of Record contained on page 1 of the Brief of Appellants filed by Messrs. Moran, Endictor, McAuliffe, and Moran.

IV.

Counsel for Appellees did not urge for consideration by this Court any contention conceding that the materials were obscene, but that a constitutional right to offer the same for dissemination exists, as was done by counsel in *Reidel*. The difference between *Reidel* and two cases participated in by Counsel for Appellees here in the United States Supreme Court was that in *Reidel* and *Thirty-Seven Photographs*, there was in the record a clear concession that the material was obscene by any test applied by any of the members of the Court, including the variable concept of obscenity.

The two cases in which this Counsel participated in and were the subject of a *per curiam Redrup* reversal were *Bloss v.*

Michigan, decided the same day as *Reldel* and *Thirty-Seven Photographs* by the United States Supreme Court, in which a conviction for violation of the obscenity laws in showing a movie in a public theater to adults only, which motion picture is similar in content to the motion pictures before this Court in the present case, was set aside; the other case is *Burgin v. State of South Carolina*, which case has been discussed in Appellees' Supplemental Briefs heretofore furnished the Court and said case was reversed on October 12, 1971.

V.

It is submitted that this Honorable Court has overlooked and misconstrued a material fact in the record which is controlling as authority and which would require a different judgment from that rendered, and further this Court has erroneously construed the petition of Appellees on the law in the premises.

CONCLUSION

It is urged on this Honorable Court that there are grave constitutional questions as yet unanswered, which Appellees have raised herein by this *Petition for Rehearing*, due either to the Court having misconstrued a basic factual premise and/or because the Court may have misapprehended the various propositions advanced by Appellants and Appellees.

WHEREFORE, Petitioners pray that the Court allow a rehearing in this matter so that the issues set forth hereinbefore may be duly considered.

ROBERT EUGENE SMITH, Esq.

D. FREEMAN HUTTON, Esq.

Attorneys for Appellees.

CERTIFICATE OF COUNSEL

I hereby certify that I have reviewed the decision of this Honorable Court, rendered November 5, 1971, and it is the belief of Counsel that a basic, underlying fact has been overlooked and points of law and controlling authority have been erroneously construed or misapplied.

ROBERT EUGENE SMITH, Esquire.

(Certificate of Service omitted in printing)

**IN THE SUPREME COURT OF
THE STATE OF GEORGIA**

No. 26631

(Title omitted in printing)

ORDER ON MOTIONS FOR REHEARING

SUPREME COURT OF GEORGIA

Atlanta, November 18, 1971

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

Lewis R. Slaton, District Attorney, et al. v. Paris Adult Theatre, I, et al.

Upon consideration of the motions for a rehearing filed in this case, it is ordered that they are hereby denied.

**Supreme Court of the State of Georgia,
Clerk's Office, Atlanta, February 25, 1972**

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

**Hazel E. Hallford,
Deputy Clerk.**

Attorney for Appellee

**IN THE SUPERIOR COURT
FOR THE COUNTY OF FULTON
STATE OF GEORGIA**

Civil Action No. B61298

**LEWIS R. SLATON, As District Attorney,
Atlanta Judicial Circuit and
HINSON MCAULIFFE, as Solicitor General of
the Criminal Court of Fulton County,
Plaintiffs,**

v.

**PARIS ADULT THEARTE I
ROBERT MITCHEM, PHILLIP A. FISHMAN,
CLIFF TERRY, FRED PRICHARD, JOE BALLEW,
Defendants.**

Civil Action No. B61299

**LEWIS R. SLATON, As District Attorney,
Atlanta Judicial Circuit and
HINSON MCAULIFFE, As Solicitor General of the
Criminal Court of Fulton County,
Plaintiffs,**

v.

**PARIS ADULT THEATRE II,
ROBERT MITCHEM, PHILLIP A. FISHMAN
CLIFF TERRY, FRED PRICHARD, JOE BALLEW,
Defendants.**

NOTICE OF APPEAL

Notice is hereby given that each of the above named Plaintiffs hereby appeals to the Supreme Court of the State of Georgia from the order of this Court on April 12, 1971

finding and declaring that the motion picture films entitled "IT ALL COMES OUT IN THE END" and "MAGIC MIRROR" are not obscene, and refusing to enjoin the exhibition of said motion picture films.

The Clerk should transmit the entire record including the transcript, documents, films and nothing should be omitted.

This the 20th day of April, 1971:

W. BAER ENDICTOR

Attorney for Plaintiffs.

160 Pryor Street, S.W.
Atlanta, Georgia, 30303
572-2911

GEORGIA, Fulton County, Clerk's Office Superior Court
Filed for Record 20 day of April 1971.
Recorded April 22, 1971

/s/ Clerk

(Certificate of Service omitted in printing)

**IN THE SUPERIOR COURT FOR THE
COUNTY OF FULTON
STATE OF GEORGIA**

Civil Action No. B 61298

Civil Action No. B 61299

(Title omitted in printing)

NOTICE OF APPEAL' - Filed April 20, 1971

NOW COME the Plaintiffs in the above entitled cases, and within thirty (30) days from the entry of the Order and Final Judgment herein appealed from, amend their Notice of Appeal so that as perfected the said Notice of Appeal shall read as follows:

Notice is hereby given that each of the above named Plaintiffs do hereby appeal to the Supreme Court of the State of Georgia from the Order and Final Judgment of the Fulton County Superior Court entered in the above entitled cases and dated April 12, 1971, finding and declaring that the motion picture films entitled "IT ALL COMES OUT IN THE END" and "MAGIC MIRROR" are not obscene and dismissing Plaintiffs' Complaint against each of the above named Defendants, and refusing to enjoin the Defendants from exhibiting each of the said motion picture films.

The Clerk of the Superior Court shall transmit the entire record in each of the aforesaid cases, including the transcript, documents, and films and nothing shall be omitted.

This the Day of May, 1971.

/s/

THOMAS E. MORAN

/s/

W. BAER ENDICTOR
Attorneys for Plaintiffs.

GEORGIA, Fulton County, Clerk's Office Superior Court
 Filed for Record 4 day of May, 1971
 Recorded May 5, 1971

/s/ Clerk

(Certificate of Service omitted in printing)

NOTICE OF APPEAL - Filed April 20, 1971

NOW COMES the Plaintiff in the above entitled case, and within thirty (30) days from the entry of the Order and Final Judgment herein appealed from, and the Plaintiff shall Appeal so that as perfected the said Notice of Appeal shall read as follows:

Plaintiff do hereby appeal the Superior Court of the State of Georgia from the Order and Final Judgment of the said Court entered in the above entitled case and dated April 12, 1971, finding and declaring that the motion picture film entitled "ALL COMES OUT IN THE END" and "MAGIC MIRROR" are not obscene and dismissing Plaintiff's Complaint against each of the above named Defendants and refusing to enjoin the Defendants from exhibiting each of the said motion picture films.

The Clerk of the Superior Court shall transmit the entire record in each of the above cases, including the transcript, documents, and films and nothing shall be omitted.

This the 10 day of May, 1971 at

THOMAS E. MORAN

W. BAER ENDICOTT

Attorneys for Plaintiff

**IN THE SUPERIOR COURT FOR THE
COUNTY OF FULTON
STATE OF GEORGIA**

Case No. B 61298

**LEWIS R. SLATON, As District Attorney,
Atlanta Judicial Circuit and
HINSON MCAULIFFE As Solicitor General
of the Criminal Court of Fulton County,
Plaintiffs**

v.

**CLIFF TERRY - FRED PRITCHARD
PARIS ADULT THEATREI
ROBERT MITCHEM - JOE BALLEW
PHILLIP A. FISHMAN,
Defendants.**

**COMPLAINT TO DECLARE MOTION PICTURE
ENTITLED "IT ALL COMES OUT IN THE END"
OBSCENE AND SUBJECT TO SEIZURE
(Filed December 28, 1970)**

Plaintiffs show that LEWIS R. SLATON is the District Attorney of the Atlanta Judicial Circuit, Atlanta, Fulton County, Georgia, and that HINSON MCAULIFFE, is the Solicitor General of the Criminal Court of Fulton County

-1-

That the defendants do business as, own and operate Paris Adult Theatre I, 320 Peachtree St., N.E. Atlanta, Fulton County, Georgia, and exhibit for an admission fee certain motion picture films to members of the public.

-2-

That defendant Robert Mitchem is President of and defendant Phillip A. Fishman is the Manager of and operates and conducts the business of the Paris Adult Theatre I for the benefit of said corporation.

-3-

That the defendants are in joint control and possession of a certain motion picture film, entitled "IT ALL COMES OUT IN THE END" and is showing this film at the said theatre to the public on a fee basis.

-4-

That the defendants did on the 28th day of December, 1970, show said film to the general public and will continue to show the said film for an indefinite period of time unless precluded by this Court from so doing.

-5-

That the exhibition of the motion picture film entitled "IT ALL COMES OUT IN THE END" at the Paris Adult Theatre I, in Atlanta, Fulton County, Georgia, constitutes a flagrant violation of Georgia Code Section 26-2101 in that the sole and dominant theme of the said motion picture film considered as a whole and applying contemporary community standards appeals to the prurient interest in sex, nudity and excretion, and that the said motion picture film is utterly and absolutely without any redeeming social value whatsoever, and transgresses beyond the customary limits of candor in describing and discussing sexual matters.

-6-

Plaintiffs show that under the present interpretation of the law applied to such matters and adversary hearing to

determine the question of obscenity must first be had prior to a seizure of such film and the destruction thereof.

WHEREFORE, Plaintiffs respectfully demand:

(a) That the defendants and each of them be served with a copy of this complaint as provided by law;

(b) That a Rule Nisi issue requiring the defendants and each of them to show cause on a date certain why the motion picture film "IT ALL COMES OUT IN THE END" should not be declared obscene and subject to be seized by the DISTRICT ATTORNEY of this Circuit or by the SOLICITOR GENERAL of the Criminal Court of Fulton County, and the defendants be directed to have and produce upon the said hearing the motion picture film "IT ALL COMES OUT IN THE END";

(c) That the motion picture film "IT ALL COMES OUT IN THE END" be declared obscene and subject to seizure;

(d) That the Defendants and each of them be temporarily and permanently enjoined from exhibiting the motion picture film "IT ALL COMES OUT IN THE END" within the jurisdiction of this Court.

(e) That the defendants and each of them be temporarily restrained and enjoined from destroying, altering, concealing or removing the motion picture film "IT ALL COMES OUT IN THE END" without the jurisdiction of this Court.

(f) That Plaintiffs have such other and further relief as this Court may deem mete and proper.

W. BAER ENDICTOR,
Assistant Solicitor Criminal Court
of Fulton County
Attorney for Plaintiffs.

/s/

TONEY HIGHT,

Assistant District Attorney,
 Atlanta Judicial Circuit
 Attorney for Plaintiffs.

GEORGIA**FULTON COUNTY**

Before me the undersigned attesting officer duly authorized to administer oaths personally appeared HINSON MCAULIFFE, who, after being duly sworn deposes and says that the facts contained in the within and foregoing complaint are true and correct.

/s/ (Illegible)

Sworn to and Subscribed before me this the 28th day of December, 1970.

James L. Webb.

ORDER

The within and foregoing complaint read and considered let the same be filed.

Let the Defendants and each of them show cause if any they have before the Presiding Judge of this Court on the 7 day of January, 1971, at 2:00 o'clock P.M., then and there to be heard why the prayers of the Plaintiffs' should not be granted and the motion picture film "IT ALL COMES OUT IN THE END" be declared obscene.

It is further ordered that the Defendants have and produce before the Court at the date and time aforesaid one print each of the motion picture film "IT ALL COMES OUT IN THE END" as it was exhibited to the general public on the 28th day of December, 1970, together with the proper equipment for exhibiting and viewing the same.

In the meantime and until further order of this Court, the defendants and each of them are temporarily restrained and enjoined from concealing, destroying, altering or removing the motion picture film "IT ALL COMES OUT IN THE END" without the jurisdiction of this Court.

Let the Sheriff of Fulton County serve a copy of the within and foregoing summons and complaint together with a copy of this Order upon each of the defendants as provided by law.

Done this the 28th day of December, 1970, at 2:24 o'clock, P.M.

/s/ (Illegible)

JUDGE SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

THE SUPERIOR COURT FOR THE COUNTY
OF FULTON, STATE OF GEORGIA

Civil Action, File Number B61298

LEWIS R. SLATON, District Attorney
HINSON MCAULIFFE, Solicitor General

v.
PARIS ADULT THEATRE I, CLIFF TERRY,
JOE BALLEW, ROBERT MITHEM,
PHILLIP A. FISHMAN, FRED PRICHARD

SUMMONS

To the above-named Defendant:

You are hereby summoned and required to file with the clerk of said court and serve upon W. Baer Endictor, plaintiff's attorney, whose address is 160 Pryor St., an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 28, Day of Dec. 1970.

/s/
Deputy Clerk

(Filed in Office, Dec. 28, 1970)

GEORGIA, FULTON COUNTY,

I have this day served the Defendant JOE BALLEW personally with a copy of the within complaint and summons.

This Dec. 28, 1970.

At 3:40 P.M.

Investigator, Deputy Sheriff
Criminal Court,
Fulton County, Ga.

GEORGIA, FULTON COUNTY

I have this day served the Defendant Fred Pritchard personally with a copy of the within petition and process.

This Dec. 28, 1970

at 3:40 P.M.

C.R. Little, Investigator
Criminal Court, Fulton County, Ga.

GEORGIA, FULTON COUNTY

I have this day served the Defendant Cliff Terry personally with a copy of the within petition and process.

**This Dec. 28, 1970.
at 3:40 P.M.**

C.R. Little, Investigator
Criminal Court, Fulton County,
Ga.

D. FREEMAN HUTTON
ATTORNEY AT LAW

SUITE 3017 First National Bank Tower

Atlanta, Georgia 30303

Phone 404 523-5339

January 4, 1971

Book 2546 page 312

Mr. J.W. Simmons, Clerk
Superior Court of Fulton County
Fulton County Courthouse
136 Pryor Street, S.W.
Atlanta, Georgia 30303

Re: B-61298

Slaton and McAuliffe

vs.

Paris Adult Theatre I, et al.

Dear Mr. Simmons:

This is to certify that on January 4, 1971 I personally served Hinson McAuliffe, Plaintiff in the above styled action, with a subpoena requiring him to appear as a witness in Room 603, Fulton County Courthouse on January 7, 1971, at 2:00 p.m.

Please have said service entered on the docket. Thank you for your assistance.

Sincerely yours,
D. Freeman Hutton
D. Freeman Hutton

DFH:bjh

Georgia, Fulton County, Clerk's
Office Superior Court
Filed for Record 5 day of Jan. 1971
Recorded Jan. 6, 1971
J.W. Simmons Clerk.

**IN THE SUPERIOR COURT FOR THE
COUNTY OF FULTON
STATE OF GEORGIA**

Civil Action B-61298

**LEWIS R. SLATON, As District Attorney,
Atlanta Judicial Circuit, and
HINSON MCAULIFFE, As Solicitor General
of the Criminal Court of Fulton County,**

vs.

**PARIS ADULT THEATRE I
ROBERT MITCHEM, PHILLIP A. FISHMAN,
CLIFF TERRY, FRED PRICHARD, and JOE BALLEW**

Civil Action B-61299

**LEWIS R. SLATON
HINSON MCAULIFFE**

vs.

**PARIS ADULT THEATRE II
ROBERT MITCHEM, PHILLIP A. FISHMAN,
CLIFF TERRY, FRED PRICHARD, and JOE BALLEW**

**BRIEF IN SUPPORT OF MOTIONS TO
DISMISS OF DEFENDANTS TERRY,
PRICHARD AND BALLEW**

(Filed April, 12, 1971)

I.

**THE ONLY STATUTORY PROCEDURE BY WHICH
DEFENDANTS CAN CONCEIVABLY BE
COMPELLED TO PRODUCE THE FILMS IS
OUTLINED IN GEORGIA CODE ANNOTATED
§81A-134 AND PLAINTIFFS HAVE NOT MADE
THE REQUISITE SHOWING UNDER THAT
SECTION.**

It has become clear that there must be a prior adversary proceeding before there can be seizure of allegedly obscene materials. *FREEDMAN V. MARYLAND*, 380 U.S. 51, 85 S. Ct. 734, 13 L. Ed.2d 649 (1965), *TIETEL FILM CORPORATION V. CUSACK*, 390 U.S. 139, 88 S. Ct. 754, 19 L. Ed.2d 966 (1968). However, there is no statute in Georgia which governs the procedure to be used in such a hearing or which provides authority for one while providing safeguards against intrusions into areas protected by the First Amendment to the United States Constitution. Some support for a show cause hearing is provided by *dictum* in *Gable v. Jenkins*, 305 F. Supp. 998, fn. 3 at 1001 (1969) but this is not the "authoritative judicial assurance" required by *Freedman v. Maryland*, *supra*,

Therefore, it is apparent that the procedure being employed here by the Plaintiffs is in reality a Motion to Produce pursuant to Georgia Code Annotated §81A-134 (Civil Practice Act. §34). It is obvious from a comparison of the provisions of that Code section and the complaints in these cases that the Plaintiffs have not met the requirements of said Code section.

First, Georgia Code Annotated §81A-134 provides that the moving party must make a showing of good cause before he will be allowed to inspect the documents or things. It has been held that if the moving party can get the information it needs without resorting to the discovery process, good cause does not exist. *UNCLE BEN'S, INC. V. UNCLE BEN'S PANCAKE HOUSES, INC.*, 30 F.R.D.506 (D. TEX.). No showing has been made that any attempt to obtain the films elsewhere was made by the Plaintiffs.

Nor has the motion of the Plaintiffs been accompanied by a supporting affidavit showing that the Defendants before the Court have the possession, custody and control of the films required by §34 of the Civil Practice Act.

Received Jan. 5, 1971
J.W. Thompson Clerk

In a case decided under the Federal Rule of Civil Procedure from which our rule was derived it has been held that:

"The rule permitting compelled production of corporate records by their custodian may be invoked only against the party who is in fact the custodian of the records in question." *Brussel v. U.S.*, 396 U.S. 1229, 90 S. Ct. 24 L. Ed. 2d 53 (1969).

On the question of whether the Civil Practice Act applies in a case such as this (a civil action) see Georgia Code Annotated §81A-101 which states "This Title governs the procedure in all courts of record... in all suits of a civil nature..., with the exceptions stated in section 81 A-181." There are no applicable statutory procedures as contemplated in § 81A-181 so the Civil Practice Act must apply.

Section 81A-181 refers to special statutory proceedings which this is not.

Based on the above the Plaintiffs have not shown facts sufficient to warrant an order requiring the production of the films.

II.

SERVICE UPON BALLEW, PRICHARD AND TERRY CANNOT REQUIRE EITHER OR ALL OF THEM TO PRODUCE THAT OVER WHICH THEY HAVE NO CONTROL AND THEIR FAILURE TO PRODUCE THE DESIGNATED FILMS CANNOT BE THE BASIS OF COURT IMPOSE SANCTIONS ABSENT A SHOWING THAT THEY ARE AUTHORIZED TO DO SO BY THEIR RELATIONSHIP WITH THEIR PRINCIPAL.

The Defendants before the Court cannot be expected to do that which they have no authority to do, as between them and their principal, in regard to the movies made the subject to the orders of this Court dated December 28, 1970.

Obviously, the only people who can be compelled to produce the films are those who are custodians, as stated in *Brussel v. U.S.*, *supra*.

The defendants before the Court do not have such custody and control over the film as would allow them to deal with the films in a way contrary to the wishes of their principal. Clearly, destruction of the films is not in the best interests of the business of the Paris Adult Theatre I & II as seizure of the films and a decision that they are obscene could subject the party producing them to criminal prosecutions as well as result in their destruction and a consequent breach of contract action by the distributor of the films. For the agents of a proprietor who is himself named a party to the suit to be asked to make a decision as to whether to surrender the films is to make them exercise ultimate managerial control over the business; a control which has not been shown to exist and can't be presumed. Even though an agent is presumed to have power to do anything "within the scope of the business", breaching a contract or providing what might be the basis of a prosecution for a crime is not within the scope of the business. The agent's authority, extends solely to those acts which the principal manifestly intends to be performed by the agent. Georgia Code Annotated §4-101.

Nor can Joe Ballew be required to produce the films solely because he is a "manager" unless he in fact has the broad powers which he might be presumed to have. Such a presumption can be rebutted and the Court should look to the actual scope of the agent's authority in determining whether he can be compelled to produce the films.

Under such a scrutiny none of these defendants have the requisite control over the films to require that they produce them.

III.

THE EX PARTE INJUNCTION GRANTED TO PLAINTIFFS VIOLATES CODE § 55-102 WHICH PROHIBITS EQUITY FROM TAKING PART IN THE ADMINISTRATION OF THE CRIMINAL LAW AND THEREFORE THIS ACTION SHOULD BE DISMISSED.

The basis of the action alleged by the Plaintiffs is that the films are obscene under Ga. Code Section 26-2101 which makes it unlawful, *inter alia*, to possess obscene material of any description, knowing the obscene nature, thereof with the intent to distribute the materials. At bottom this complaint is aimed at enforcing the criminal statute quoted above by destroying that which makes it possible to commit the offense. This clearly is using equity to enforce the criminal laws and is prohibited under the Code section cite.

Equity will not enjoin a mere violation of the criminal law. *Moon v. Clark*, 192 Ga.47 (1941). Equity cannot be used to enforce the criminal law. *Bennett v. Kimmel*, 163 Ga. 725 (1926). It is clear that that is what is being done here as the Plaintiffs alleged that the films in question were being shown to public, which violates Ga. Code §26-2101. The complaints go further and say that Defendants "will continue to show said film for an indefinite period of time unless precluded by this Court from so doing." Plaintiffs' complaints, paragraph four. In the next paragraph of the complaints they allege further that "the exhibition of the motion picture film... constitutes a flagrant violation of Georgia Code Section 26-2101."

The Plaintiffs' actions in bringing these complaints were designed to stop the commission of what have been defined as crime by having the films destroyed. The Court should follow the cases cited and not allow its equitable powers to be used in contravention of Georgia Code Section 55-102.

Inasmuch as *Stanley v. Georgia*, 394 U.S. 557, 89 S. Ct. 1243, 22 L. Ed.2d 542 (1969) allows for the private possession of obscene materials the films cannot be destroyed even if they are obscene as *Stanley* made it clear that it is not the materials but their use which is the concern of the criminal law. If mere private possession is protected by the First Amendment to the United States Constitution then the state of Georgia can only prosecute for violation of Ga. Code §26-2101. It cannot prohibit the possession of films when mere possession is not unlawful. To hold otherwise would negate the thrust of *Stanley*, See also, *Redrup v. New York*, 386 U.S. 767 (1967), rehearing denied 388 U.S. 924.

For the above reasons Defendants pray that their motions to dismiss be granted.

Respectively submitted,

D. FREEMAN HUTTON
ATTORNEY FOR MOVANTS

ROBERT EUGENE SMITH
ATTORNEY FOR MOVANTS

(Certificate of Service omitted in printing)

**IN THE SUPERIOR COURT FOR THE
COUNTY OF FULTON
STATE OF GEORGIA**

Civil Action No. B-61298

**LEWIS R. SLATON,
HINSON MCAULIFFE**

v.

**PARIS ADULT THEATRE I,
ROBERT MITCHEM, PHILLIP A. FISHMAN,
CLIFF TERRY, FRED PRITCHARD and JOE BALLEW**

Civil Action No. B-61299

**LEWIS R. SLATON,
HINSON MCAULIFFE**

v.

PARIS ADULT THEATRE II, et al

ORDER - Filed April 12 1971

The State contends that the motion pictures under review in the above actions are obscene. The titles of the films are "It All Comes Out in the End" and "Magic Mirror."

Assuming that obscenity is established by a finding that the actors cavorted about in the nude indiscriminately, then these films may fairly be considered obscene. Both films are clearly designed to entertain the spectator and perhaps, depending on the viewer, to appeal to his or her prurient interest. The portrayal of the sex act is undertaken; but the act itself is consistently only a simulated one if, indeed, the viewer can assume an act of intercourse or of fellatio is occurring from the machinations which are portrayed on the screen. Each of the films is childish, unimaginative, and altogether boring in its sameness.

It appears to the Court that the display of these films in a commercial theatre, when surrounded by requisite notice to the public of their nature and by reasonable protection against the exposure of these films to minors, is constitutionally permissible.

IT IS THE JUDGMENT OF THIS COURT THAT the films, even though they display the human body and the human personality in a most degrading fashion, are not obscene.

The actions against the Defendants, therefore, are dismissed.

This 12th day of April, 1971.

JACK ETHERIDGE
JUDGE, Superior Court of
Fulton County, Atlanta
Judicial Circuit

**IN THE SUPERIOR COURT FOR THE
COUNTY OF FULTON
STATE OF GEORGIA**

No. B-61298

(Title omitted in printing)

No. B-61299

(Title omitted in printing)

STIPULATION OF THE RECORD -

Filed May 30, 1971

The motion picture films entitled "IT ALL COMES OUT IN THE END" and "MAGIC MIRROR" are a part of the record in and are to be considered on appeal of the above entitled cases.

The Supreme Court of Georgia consenting physical possession and custody of the said motion picture films shall be retained by the Solicitor General of the Criminal Court of Fulton County and shall at the direction of the Supreme Court of Georgia be made available for viewing by said Court.

W. BAER ENDICTOR

Assistant Solicitor General

Criminal Court of Fulton County

JUDGE

Superior Court of

Fulton County, Georgia

(Certificate of Service omitted in printing)

**IN THE SUPERIOR COURT FOR
THE COUNTY OF FULTON
STATE OF GEORGIA**

No. B-61298

(Title omitted in printing)

No. B-61299

(Title omitted in printing)

ORDER — Filed April 30, 1971

The motion picture films entitled "IT ALL COMES OUT IN THE END" and "MAGIC MIRROR" are hereby ordered to be delivered to and retained by the Solicitor General of the Criminal Court of Fulton County pending the appeal of the above styled cases, in order that the said motion picture films may be made available for showing to the Supreme Court of Georgia at its direction in compliance with the stipulation of record filed in said cases.

This 30 day of April, 1971.

**JUDGE, Superior Court of
Fulton County,
Atlanta Judicial Circuit.**

(Certificate of Service omitted in printing)

**IN THE SUPERIOR COURT FOR THE
COUNTY OF FULTON
STATE OF GEORGIA**

No. B-61298
**LEWIS R. SLATON,
HINSON MCAULIFFE**

v.

PARIS ADULT THEATRE I, et al.

No. B-61299
**LEWIS R. SLATON,
HINSON MCAULIFFE,**

v.

PARIS ADULT THEATRE II, et al.

**EXTENSION FOR TIME FOR FURNISHING TRANSCRIPT —
Filed May 12, 1971**

It appearing that Notice of Appeal has been filed in the above styled case and that the Reporter will be unable to complete the transcript within the time provided by law for transmittal of the record to the Supreme Court of Georgia.

It is HEREBY ORDERED that the time for furnishing the transcript and record be and it is hereby ordered extended for a period of 14 days.

This the 12 day of May, 1971.

**JUDGE,
Superior Court of
Fulton County, Georgia**

(Certificate of Service omitted in printing)

**IN THE SUPERIOR COURT FOR
THE COUNTY OF FULTON
STATE OF GEORGIA**

No. B-61299

**LEWIS R. SLATON
HINSON MCAULIFFE,**

v.

**CLIFF TERRY - FRED PRICHARD
PARRIS ADULT THEATRE II
JOE BALLEW, ROBERT MITCHEM
PHILLIP A. FISHMAN**

**COMPLAINT TO DECLARE MOTION PICTURE
ENTITLED "MAGIC MIRROR" OBSCENE
AND SUBJECT TO SEIZURE -**

(Filed Dec. 28, 1970)

Plaintiffs show that LEWIS R. SLATON is the District Attorney of the Atlanta Judicial Circuit, Atlanta, Fulton County, Georgia, and that HINSON MCAULIFFE, is the Solicitor General of the Criminal Court of Fulton County.

-1-

That the defendants do business as, own and operate Paris Adult Theatre II, 320 Peachtree St., N.E., Atlanta, Fulton County, Georgia, and exhibit for an admission fee certain motion picture films to members of the public.

-2-

That defendant Robert Mitchem is President of and defendant Phillip A. Fishman is the Manager of and operates and conducts the business of the Paris Adult Theatre II for the benefit of said corporation.

-3-

That the defendants are in joint control and possession of a certain motion picture film, entitled "MAGIC MIRROR" and is showing this film at the said theatre to the public on a fee basis.

-4-

That the defendants did on the 28th day of December, 1970, show said film to the general public and will continue to show the said film for an indefinite period of time unless precluded by this Court from so doing.

-5-

That the exhibition of the motion picture film entitled "MAGIC MIRROR" at the Paris Adult Theatre II, in Atlanta, Fulton County, Georgia, constitutes a flagrant violation of Georgia Code Section 26-2101 in that the sole and dominant theme of the said motion picture film considered as a whole and applying contemporary community standards appeals to the prurient interest in sex, nudity and excretion, and that the said motion picture film is utterly and absolutely without any redeeming social value whatsoever, and transgresses beyond the customary limits of candor in describing and discussing sexual matters.

-6-

Plaintiffs show that under the present interpretation of the law applied to such matters and adversary hearing to determine the question of obscenity must first be had prior to a seizure of such film and the destruction thereof.

WHEREFORE, Plaintiffs respectfully demand:

(a) That the defendants and each of them be served with a copy of this complaint as provided by law;

(b) That a Rule Nisi issue requiring the defendants and each of them to show cause on a date certain why the motion picture film "MAGIC MIRROR" should not be declared obscene and subject to be seized by the DISTRICT ATTORNEY of this Circuit or by the SOLICITOR GENERAL of the Criminal Court of Fulton County, and the defendants be directed to have and produce upon the said hearing the motion picture film "MAGIC MIRROR";

(c) That the motion picture film "MAGIC MIRROR" be declared obscene and subject to seizure;

(d) That the Defendants and each of them be temporarily and permanently enjoined from exhibiting the motion picture film "MAGIC MIRROR" within the jurisdiction of this Court.

(e) That the defendants and each of them be temporarily restrained and enjoined from destroying, altering, concealing or removing the motion picture film "MAGIC MIRROR" without the jurisdiction of this Court.

(f) That Plaintiffs have such other and further relief as this Court may deem mete and proper.

W. BAER ENDICTOR,
Assistant Solicitor
Criminal Court of Fulton County
Attorney for Plaintiffs

TONY HIGHT, Assistant District
Attorney, Atlanta Judicial Circuit
Attorney for Plaintiffs.

GEORGIA
FULTON COUNTY

Before me the undersigned attesting officer duly authorized to administer oaths personally appeared HINSON

MCAULIFFE, who, after being duly sworn deposes and says that the facts contained in the within and foregoing complaint are true and correct.

/s/ (Illegible)

Sworn to and Subscribed before me
this the 28 day of December, 1970.

James L. Webb

NOTARY PUBLIC

ORDER

The within and foregoing complaint read and considered, let the same be filed.

Let the Defendants and each of them show cause if any they have before the Presiding Judge of this Court on the 13 day of January, 1971, at 2:00 o'clock P.M., then and there to be heard why the prayers of the Plaintiffs' should not be granted and the motion picture film "MAGIC MIRROR" be declared obscene.

It is further ordered that the Defendants have and produce before the Court at that date and time aforesaid one print each of the motion picture film "MAGIC MIRROR" as it was exhibited to the general public on the 28th day of December, 1970, together with the proper equipment for exhibiting and viewing the same.

In the meantime and until further order of this Court, the defendants and each of them are temporarily restrained and enjoined from concealing, destroying, altering or removing the motion picture film "MAGIC MIRROR" without the jurisdiction of this Court.

Let the Sheriff of Fulton County serve a copy of the within and foregoing summons and complaint together with a

copy of this Order upon each of the defendants as provided by law.

Done this the 28th day of December, 1970, at 2:24 o'clock P.M.

/s/
JUDGE SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

THE SUPERIOR COURT FOR THE COUNTY
OF FULTON' STATE OF GEORGIA

Civil Action, File Number: B-61299

LEWIS R. SLATON, DISTRICT ATTORNEY
HINSON MCAULIFFE, SOLICITOR GENERAL
VS.
PARIS ADULT THEATRE II, CLIFF TERRY,
JOE BALLEW, FRED PRITCHARD, ROBERT MITCHEM,
PHILLIP A. FISHMAN, 320 Peachtree, St., N.E.

SUMMONS

To the above-named Defendant:

You are hereby summoned and required to file with the clerk of said court and serve upon W. Baer Endictor, plaintiff's attorney, whose address is 160 Pryor St., an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 28th Day of Dec. 1970.

/s/
Deputy Clerk

Filed in office, this the Dec. 28, 1970
R.L. Lawson, Deputy Clerk.

GEORGIA, FULTON COUNTY

I have this day served the Defendant JOE BALLEW personally with a copy of the within complaint and summons.

This Dec. 28, 1970 at 3:40 P.M.

Ch. Little, Investigator

Criminal Court, fulton County, Ga.

GEORGIA, FULTON COUNTY

I have this day served the Defendant Fred Pritchard personally with a copy of the within petition and process.

This Dec. 28, 1970

at 3 40 P.M.

C.R. Little, Investigator

Criminal Court, Fulton County, Ga.

GEORGIA, FULTON COUNTY

I have this day served the Defendant Cliff Terry personally with a copy of the within petition and process.

This Dec. 28, 1970.

C.R. Little, Investigator

Criminal, Court, Fulton County, Ga.

**IN THE SUPERIOR COURT FOR
THE COUNTY OF FULTON
STATE OF GEORGIA**

No. B-61299

**LEWIS R. SLATON
HINSON MCAULIFFE**

PARIS ADULT THEATRE II, et al.

ORDER — Filed Jan. 7, 1971

Due to a conflict in the Court's calendar, the time for appearance in the above styled case is hereby ordered changed from Wednesday, January 13, 1971, at 2:00 P.M. to Tuesday, January 12, 1971 at 2:00 P.M.

The Defendants and each of them are ordered to obey and comply with the rest and remainder of the original Order dated December 28, 1970.

/s/ (Illegible)

**JUDGE, SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT**

**IN THE SUPERIOR COURT FOR THE
COUNTY OF FULTON
STATE OF GEORGIA**

No. B-61299

(Title omitted in printing)

ORDER — Filed Jan. 8, 1971

Upon motion of the Defendants and Counsel for the Plaintiffs consenting the hearing in the above entitled case is

hereby ordered set for 10:00 A.M. on Wednesday, January 13, 1971.

This the 8 day of January, 1971.

/s/ (Illegible)

JUDGE, SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

STATE OF GEORGIA,
COUNTY OF FULTON.

LEWIS R. SLATON, AS
DISTRICT ATTORNEY,
ATLANTA JUDICIAL CIRCUIT, AND
HINSON McAULIFFE, AS
SOLICITOR GENERAL OF THE
CRIMINAL COURT OF FULTON COUNTY,

Appellants,

v.

PARIS ADULT THEATRE I, ET AL.,

Appellees.

LEWIS R. SLATON, AS
DISTRICT ATTORNEY
ATLANTA JUDICIAL CIRCUIT, AND
HINSON McAULIFFE, AS
SOLICITOR GENERAL OF THE
CRIMINAL COURT OF FULTON COUNTY,

Appellants,

v.

PARIS ADULT THEATRE II, ET AL.,

Appellees.

I hereby certify that the foregoing pages, hereto attached, contain the original Notice of Appeal, filed in this office on

April 20, 1971, the Amendment to Notice of Appeal, filed in office on May 4, 1971, together with a true and correct copy of those portions of the record of file and required by the Notice of Appeal and Amendment to be transmitted to the Supreme Court of Georgia.

I further certify that under separate cover is transmitted to the Supreme Court of Georgia the Transcript of Proceedings, filed by the Court Reporter.

The Notice of Appeal, Amendment to Notice of Appeal, Transcript of Record, and the Transcript of Proceedings is the entire record on appeal, as appears from the records and files in this office.

I further certify that delay in transmission of this record from the date the Notice of Appeal was filed until May 28, 1971 was due to stress of work in this office, and in no way due to the fault of Appellant, nor any party at interest. On May 28, 1971, the deputy clerk in charge of collections in this office, mailed to Appellant's Attorney a bill for costs of filing Notice of Appeal, Amendment to Notice of Appeal, and preparing Transcript of Record, and filing of Transcript of Proceedings. Immediately upon payment the entire record on appeal is transmitted.

I further certify that an identical copy of the entire record transmitted is of file in this office.

Witness my signature and the seal
of Court, this 1 day of June, 1971.

Lora Paschal
Deputy Clerk, Superior Court,
Fulton County, Georgia.

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

No. C.A. B-61298

No. C.A. B-61299

**LEWIS R. SLATON, as
DISTRICT ATTORNEY, ATLANTA JUDICIAL
CIRCUIT, and HINSON MCAULIFFE, as
SOLICITOR GENERAL OF THE CRIMINAL
COURT OF FULTON COUNTY**

V.

**CLIFF TERRY, FRED PRITCHARD,
PARIS ADULT THEATRE I,
ROBERT MITCHEM, JOE BELLEW,
PHILLIP A. FISHMAN,
320 PEACHTREE STREET, N.E.,
ATLANTA, GEORGIA
PARIS ADULT THEATRE II.**

HEARING: JANUARY 13, 1971

BEFORE JUDGE JACK ETHERIDGE

TRANSCRIPT OF PROCEEDINGS

(T. 2) (The Court) All right.

(Mr. Smith) Your Honor, I have two expert witnesses which the defense will propose to call. I will ask, with the Court's permission, that they sit over in the jury box so they can view that. Your Honor, the Court has indicated that it wanted the films which were the subject of the show cause order produced in Court today. The defendants named and served are three, Joe Bellew, Manager of the theatre is here, and Mr. Bellew declines to produce on the basis that the production of the film in these proceedings could possibly lead to the eventual criminal proceedings and represent a deprivation of his rights under the fourth, fifth, and

fourteenth amendment to the Constitution of the United States, is that correct, Mr. Bellew?

(The Defendant) Yes.

(Mr. Smith) Your Honor, that is the position of Mr. Bellew, the defendant.

(The Court) Does Mr. Bellew refuse to deliver up the films?

(Mr. Smith) Yes, sir, he refused to deliver any film up, your Honor, on the basis of his right against self-incrimination.

(The Court) All right. The Court will compel him (T. 3) to and I must find him in contempt of Court for failure to produce the film.

(Mr. Smith) I will not produce the film, your Honor.

(The Court) All right.

(Mr. Smith) So the Court will enter—

(The Court) You can take an order, Mr. Moran, to that effect.

(Mr. Moran) All right. Should there be a fine imposed?

(The Court) I will impose a \$100.00 fine.

(Mr. Smith) Then, your Honor, we ask that the fine be suspended until such time as the matter can be disposed of.

(The Court) Indeed it shall be.

(Mr. Smith) Your Honor, at the time of our last hearing I indicated to the Court that as an officer of the Court I would see to the preservation of the film and without in any way waiving any rights the defendants have before this Court. I, as an officer of the Court, produced the film, delivered it to Mr. Moran wrapped in a big box with Christmas paper on it, and he enjoyed that.

(T. 4) (Mr. Moran) It's lousily wrapped I might say.

(The Court) Mr. Moran is grateful for all favors.

(Mr. Moran) The only criticism I have possession of it.

(Mr. Smith) Now that I have produced the film and the projector is in Court, I suppose this is the time when I bow down and let Mr. Moran proceed.

(The Court) All right.

(Mr. Smith) Maybe in the interest of saving time we would stipulate, maybe the second movie, although a different title, and different name, but similar in character to the first, so that by viewing the first — How do you feel about that, Mr. Moran?

(Mr. Moran) I would like to make such a stipulation but I believe the law forbids it because the law requires the Court emphatically and all persons to review it in its entirety.

(The Court) I could not find on one by stipulation, I think I have to make a finding of fact one way or the other.

(Mr. Smith) I was just trying to save time.

(The Court) I appreciate that very much. Let's proceed.

(Whereupon the film "It all comes out in the End", and "Magic Mirror" were then shown.)

IRA W. BROWN

(T. 5) DIRECT EXAMINATION

By Mr. Moran:

Q. Would you state your name and occupation to the Court, please? **A.** My name is Ira W. Brown, I am employed by the Solicitor's office of the Criminal Court of Fulton County as an investigator.

Q. I will ask you, Mr. Brown, if you had occasion to view the motion picture "It all comes out in the end"? **A.** I did.

Q. When did you first see it, sir? **A.** On December 28th of 1970.

Q. And where did you see it? **A.** At the Paris Adult Theatre, 320 Peachtree Street.

Q. And how did you gain admission to the theatre, sir? **A.** By paying an admittance of \$3.00.

Q. You bought a ticket for \$3.00? (T. 6) **A.** Yes, sir.

Q. And viewed the film? **A.** Yes, sir.

Q. Did you view the film on that day in its entirety? **A.** I did.

Q. I will ask you if you had occasion to see the same film as it was exhibited in this courtroom yesterday? **A.** I did.

Q. Was the film you exhibited in the courtroom yesterday the same film you saw at the Paris Art Theatre? **A.** To the best of my knowledge, yes.

Q. And was that located in Fulton County, Georgia, sir?

A. It was.

(Mr. Moran) The witness is with you.

CROSS EXAMINATION

Q. Mr. Brown, when you went to the theatre do you remember what the outside of the theatre looked like?

(Mr. Moran) Excuse me. May it please the Court, yesterday, at the suggestion of Mr. Smith, we went out and photographed the theatre, which we will submit in evidence (T. 7) and stipulate what the outside of the theatre is.

(Mr. Smith) All right. Your Honor, in view of the fact that Mr. Moran is willing, we are willing to stipulate, we will say that essentially the picture taken yesterday would have been the same as the outside of the theatre except for the title on December 28th.

(Mr. Moran) Yes, sir.

(The Court) All right.

Q. (Mr. Smith) You have seen the pictures, have you not, Mr. Brown? A. Yes, sir.

Q. And you are satisfied that those pictures when they are ultimately produced will be essentially the same? A. Yes, sir.

Q. As they were that day? A. Yes, sir.

Q. Were there any advertising pictures on the outside to draw your attention to the contents of either of the two films? A. No, sir.

(Mr. Smith) I have no further questions, your Honor.

(T. 8)

EXAMINATION

By The Court :

Q. Let me ask you this; do I understand from what you have said that as you approached and went to the theatre there was nothing to advise you that the film "It all comes out in the end" would be at that theatre? A. Yes, sir; I believe there was a sign out. I believe the attorney asked if there was any pictures, and I was assuming these were pictures of what was showing inside.

Q. But you knew the title of the film as you went in? A. Yes, sir.

Q. But there were no pictures to advertise it? A. No, sir.

(The Court) All right.

RE-EXAMINATION

By Mr. Moran:

Q. Was the title of the picture exhibited outside the door, outside the marquee of the building? A. I don't remember.

Q. Were there other people in the theatre when you were there, sir? A. Yes, sir.

(T. 9) Q. I will ask you, Mr. Brown, if there was anything exhibited on the outside of the theatre which would indicate to you that acts of fellatio or cunnilingual would be exhibited in that film? A. I don't remember it being, no, sir.

Q. Was there anything that would indicate to you that acts of intercourse in multiple groups would be shown to you in the film? A. No, sir.

(Mr. Moran) That is all.

RECROSS EXAMINATION

By Mr. Smith:

Q. And did you in fact see any film that showed an act of intercourse? A. The film I would say spoke for itself. When you see penetration, no.

Q. Did you see an act of cunnilingual activity as such? A. Simulated.

Q. Did you see an act of fellatio activity? A. —

Q. Let me ask you this. Have you seen any movies in the City of Atlanta where they were being shown in the (T. 10) theatre acts of cunnilingual activity and where fellatio is clearly depicted? A. Yes, sir.

Q. Were there any such depiction clearly depicted in this movie? A. Not clearly.

(Mr. Smith) No further questions.

REDIRECT EXAMINATION

By Mr. Moran:

Q. This is a film you saw yesterday, isn't it, Mr. Brown?
A. Yes, sir.

Q. I will ask you whether or not you witnessed one person, a human being with their head between the legs of a nude female? A. I did.

Q. On more than one occasion? A. Yes, sir.

Q. Did you see any films where there was a nude male between the legs of a nude female? A. I did.

Q. And with motions? A. Yes, sir.

Q. And did you see any film where the head and face of a nude female with her head in the pubic region of a nude male? A. I did.

(Mr. Moran) That is all.

RE-EXAMINATION

By The Court:

Q. Mr. Brown, I wonder if I could ask one other question, I want to be clear in my mind about it. A. Yes, sir.

Q. You have answered Mr. Moran's questions but I want to be sure of your having seen that. Would you state or could you state whether those acts were simulated acts or actual acts of cunnilingual activity and fellatio? A. You say were they acts?

Q. Did you observe those acts? A. Yes, sir.

Q. What impression— A. When you say did I observe those acts, I observed them as being those acts. I would say it was something that if you were in the room, you would see as much as you say on the film if you were standing in the room.

(T. 12) (The Court) All right.

RE-CROSS EXAMINATION

By Mr. Smith:

Q. Again you say you had seen films in Atlanta, being displayed at the theatres in which the acts are clearly depicted? A. Yes, sir.

Q. And you didn't see one act of penetration in this movie, did you, that you could clearly say was a penetration?

A. No, sir.

Q. And have you seen movies that depict penetration? A. Yes, sir.

Q. Is there then a difference between this movie and some other movies you have seen in Atlanta? A. No, sir.

Q. In terms of what they depict as to sexual activity? A. Well, that one did show penetration, whereas this didn't show penetration.

Q. You see a man's head between a woman's legs, would you have seen them from an angle that they were engaging in cunnilingual activity and not because you saw the cunnilingual activity, isn't that true? (T. 13) A. Yes, sir.

Q. So when you answered the Judge's questions, it was your imagination that you were utilizing as to what was being depicted on the screen, isn't that true? A. No, I wouldn't say that was my imagination.

Q. You saw the cunnilingual activity, you saw the fellatio or what you thought were those things? A. Well, I would say yes, that was what I believe it was.

Q. You say it was after seeing this movie that you would say that is what those things were? A. Yes, sir, definitely.

(Mr. Smith) That is all.

(The Court) All right.

(Whereupon the witness was excused.)

(T. 14)

C.R. LITTLE

DIRECT EXAMINATION

By Mr. Moran:

Q. Would you state your name and occupation to the Court, please? A. C.R. Little, investigator for the Solicitor's office of the Criminal Court of Fulton County.

Q. Mr. Little, I will ask you if you had occasion to see the motion picture entitled "Magic Mirror"? A. Yes, sir, I did.

Q. And when did you first see it, sir? A. On December 28, 1970.

Q. And where did you see it? A. Paris Art Theatre, at 320 Peachtree Street, N.E.

Q. Was that in Fulton County, Georgia? A. Yes, sir.

Q. Did you see the film "Magic Mirror" exhibited in this courtroom yesterday? A. Yes, sir, I did.

Q. Did you watch it in its entirety yesterday? A. Yes, sir.

Q. Did you see it in its entirety on December 28th, 1970? (T. 15) A. Yes, sir, I did.

Q. Was this the same movie that was shown in the courtroom yesterday that you witnessed on December 28th? A. Yes, sir.

Q. How did you gain admission to the theatre on December 28th, sir? A. By purchasing a ticket in the amount of \$3.00.

Q. And who did you purchase the ticket from, sir? A. I believe his name is Cliff Terry.

Q. I will ask you if Joe Bellew was there or have you ever seen him at the theatre? A. I have seen him there but he was not there at the time I purchased that ticket.

Q. And what position does Joe Bellew have with the theatre, sir, if you know? A. He told me he was the manager of the theatre.

Q. Joe Bellew told you that? A. And so did this boy Terry that I purchased the ticket from.

Q. Do you know what position Fred Pritchard has? A. Now Cliff Terry, the clerk on duty, told me that Fred Pritchard was the projectionist on duty at the time I witnessed this film.

(T. 16) Q. And it was Cliff Terry that sold you the ticket? A. Yes, sir.

Q. Were there other people in the theatre? A. Yes, sir.

Q. I will ask you if there was anything on the outside of the theatre that warned you what the contents of the film would be? A. Nothing other than the fact that it was adult movies being shown in the theatre.

Q. Was there anything there to warn you that acts of fellatio would be exhibited? A. Not in so many words, it was not listed on the windows there would be acts of fellatio or cunnilingual.

Q. Or erotica? A. No. It just referred to, the best of my memory, adult movies are being shown inside. Of course, it went on to state that no one under 21 years of age is admitted, and so forth.

Q. I will ask you if you had occasion to see a motion picture film entitled "It all comes out in the end" yesterday?

A. I did, sir. I saw that film in part, Mr. Moran, (T. 17) yesterday. I wasn't in the courtroom the entire time, really.

Q. I will ask you then if you have an opinion as to whether or not the motion picture film entitled "Magic Mirror" has any social redeeming value?

(Mr. Smith) Objection, your Honor, He has not been qualified as an expert. If he wants to make a proffer of him being an expert, he should do so after having qualified him.

(The Court) I believe that is correct, Mr. Moran.

(Mr. Moran) It would be out position, for the record, may it please the Court, that it is not a question for an expert; that the determination of the offensiveness of material such as this is the average man's test.

(Mr. Smith) Your Honor, as to the second test, no. The third test would relate to social value. There have been a variety of appeals in the Supreme Court of Memorabilia of all possible use considered and that the offensiveness aspect as the second test I think is somewhat different.

(Mr. Moran) The three member panel of the Missouri Supreme Court in upholding the conviction of one Herbert (T. 18) Paul Harstein asserted that obscenity is determined by how the average person views it. The question will be how it would affect this person himself.

Q. (Mr. Smith) Your Honor, that Missouri Supreme Court also said social value plays no part of any obscenity test which is, of course, in direct conflict with the Georgia Court and, of course, would be in direct conflict with the purpose for which this witness is now being asked the question.

(The Court) I sustain the objection.

(Mr. Moran) If the Court please, we now have the pictures which have been identified as Plaintiff's Exhibits 1, 2, and 3, that depict the outside exterior of the Paris 1 and 2 adult theatres. As the defendants in this case and as we stipulate, these pictures depict the theatre as the outside appeared to be on December 28, 1970.

(Mr. Smith) That is correct, your Honor, except for the title of the film.

(Mr. Moran) Yes, sir, with the exception of the title. He is with you, Mr. Smith.

(T. 19) **CROSS EXAMINATION**

By Mr. Smith:

Q. Mr. Little, Mr. Moran asked you if there were any signs outside that said acts of fellatio or acts of intercourse that were being depicted therein and I believe you said there were none. A. That's correct.

Q. Is there a theatre in town that does have such signs?
A. Yes, sir.

Q. Which one is that, sir? A. Flick 16 on Houston Street, in the City of Atlanta.

Q. So the Paris Adult Theatre has no such type of material outside? A. Not in those words.

Q. Have you been to that theatre? A. Yes, I have.

Q. Did you see acts of intercourse and did you see acts of fellatio? A. Yes, sir.

Q. Did you see acts of intercourse and did you see acts of fellatio clearly depicted in the movie "Magic Mirror"? A. I

saw acts of fellatio and cunnilingual and intercourse in the "Magic Mirror."

(T. 20) Q. You saw penetration? A. I didn't see the actual penetration of the penis, I have seen it in other films.

Q. Did you see a woman putting her mouth on the man's penis in this movie? A. I didn't actually see the lips touch.

Q. Did you see a man put his tongue on a woman's vagina? A. In the area of the vagina.

Q. So then it would be safe then to say it is your best recollection you saw no clearly defined acts of fellatio or cunnilingual or intercourse, is that correct? A. Coupled with the motions and the sound effects, the breathing, and so forth, I would say yes.

Q. This conveyed that impression to you, isn't that true? A. That's correct. I didn't see penetration, that is what I can say.

Q. You did see the woman's mouth on the man's penis but you didn't see the man's tongue on the woman's vagina, did you? A. I don't believe I actually saw the tongue on the (T. 21) vagina. It was in the region, the head was between the legs in the pelvic region.

Q. But you have seen movies where these things are clearly depicted? A. I have seen movies where these things are depicted.

Q. There was no question in this movie — A. There was no question in my mind.

Q. No question in your mind? A. No, sir.

Q. But in the other one this was clearly depicted photographically for you, true? A. That's correct.

Q. It was not clearly depicted photographically for you here frankly? A. There was no close-up actually showing the penetration as I have seen in other movies.

Q. You had to rely upon your visual senses, your hearing and such? A. I had to take it as a whole, the movement of the bodies, the region in which the head was or where the penis was or the vagina was with respect to the woman and the man. (T. 22) Of course, in one scene there was actual touching of the vagina as of two women, if you recall, in this picture.

Q. Yes. A. And the feeling and the fondling of the breasts and the body of one another, the movement, the heavy breathing.

Q. And from all those things, all those factors, that influenced you in arriving at your decision? A. I would say definitely there was intercourse, or fellatio or cunnilingual being performed, yes, sir.

Q. You didn't see it? A. I didn't see the penetration.

Q. You didn't see the act actually being performed but you saw— A. I would say in my mind, what I conceived in my mind from watching this picture, the movement, the position of the bodies, the penis being in the region it was in with respect to the woman, there was no question but what intercourse was being had, cunnilingual was being performed or fellatio.

Q. You didn't actually see it clearly and photographically depicted, did you? (T. 23) A. I didn't see the penetration as I have seen in other pictures.

Q. All right. Have you ever seen an Indian being shot off a horse by an arrow in a movie?

(Mr. Moran) Your Honor, that has no relevancy to this hearing whatsoever.

(Mr. Smith) I think it would have relevancy.

(The Court) I don't know, he is entitled on cross examination—

(Mr. Moran) Unless, of course, the Indian was nude.

(The Court) If he was an Eskimo, would it make any difference?

(The Witness) I suppose I have, sir, at one time or another, I have seen Western movies.

Q. (Mr. Smith) Do you know as a matter of worldly wisdom that Indian didn't really get shot by an arrow and didn't get killed, don't you? A. I don't profess to be a man of worldly wisdom. I don't think he got shot by the arrow, no, sir.

Q. All right. That was simulated death, wasn't it? A. Well, I suppose it was, yes, sir.

Q. And he grunted and groaned and acted like he was (T. 24) dying, didn't he? A. Well, they go through the motions, yes, sir.

(Mr. Smith) No other questions.

REDIRECT EXAMINATION

By Mr. Moran:

Q. Was there any doubt in your mind when you saw or when you testified you saw the naked man with his head between the legs of a naked man with his head between the

legs of a naked woman and his face in the pubic area that an act of cunnilingual was being performed, was there any doubt in your mind about that? A. No, sir.

Q. If you should walk into a room and see a nude woman with her legs spread apart and a nude man on top of her going up and down and her moaning and groaning and making upward and downward movements with her head and him making remarks for her to take it all, would you say that was an act of fellatio? A. Yes, sir.

(The Court) Anything further, Mr. Smith?

(Mr. Smith) No, sir.

(Whereupon the witness was excused.)

(Mr. Moran) The plaintiff will rest at this point, (T. 25) subject to the right of rebuttal.

(The Court) All right.

(Mr. Smith) May it please the Court, we come to that point of the presentation of the case by the Solicitor where we move to dismiss.

(Whereupon argument follows.)

(The Court) Gentlemen, I greatly appreciate your presentation of this case but I need to carefully and thoughtfully read a number of cases and study your briefs.

(Mr. Moran) Would the Court retain possession of the films?

(The Court) Yes, sir.

(Mr. Smith) Your Honor, technically I think for the record let's say the defendants or the parties at interest asked

the Court to hold the films in administrative custody.

(The Court) Yes, I am adjusting this hearing for that purpose, of course, of retaining this evidence, and to go ahead and rule now I don't think we can be fair in this case.

(Mr. Smith) Your Honor, we have a witness who has been sitting here and has seen the movie, and while the Court can certainly defer its ruling on our motion to dismiss (T. 26) at this point, I would ask leave and let this witness testify, and I would also like to have the Court have available certain films of the case involving a short 10 minute 16 millimeter film, I have an 8 millimeter film which I will proffer to the Court, it was in the Massachusetts Supreme Court case involving one of the same girls who appeared in "It all comes out in the end" to simulated sexual activity, I have not shown either of those two to the prosecution here, and I would like to give it to them and have them view it at their earliest convenience and then perhaps thereafter I can proffer it to the Court.

(The Court) Is that for the purpose of comparison in these?

(Mr. Smith) This is to illustrate the decisions.

(The Court) They were held not to be obscene?

(Mr. Smith) Yes, sir. They are merely to illustrate those decisions, your Honor, because it is difficult when you take the word of a Judge and try to say—

(The Court) Surely.

(Mr. Smith) I would like to show it to my brother and then thereafter they can deliver it to the Court only as illustrations and not as evidence in this case.

(T. 27) (The Court) I understand that. Of course, I welcome anything that either or both of you think is helpful

in reaching the question. Mr. Moran, what about that, do you feel that would be helpful to you?

(Mr. Moran) I haven't seen it, and I can't say whether it's a comparative film or not, I do not know, sir.

(Mr. Smith) It's illustrative of the decision, your Honor, I'm not saying that it is a comparison.

(The Court) I understand that. You want to illustrate the opinion that would be studied.

(Mr. Smith) And thereafter Mr. Moran can make whatever objections he wishes.

(The Court) Whatever you two do is fine. Now we have a witness here, what are your feelings about having his testimony offered at this time?

(Mr. Moran) I have no objection to it, sir.

(Mr. Smith) Would you waive any rights, your Honor?

(The Court) Yes, sir, by all means.

(T. 28) **ROBERT MORRIS DOWD**

DIRECT EXAMINATION

By Mr. Smith:

Q. Please state your full name and address and present professional affiliations to the Court. A. My name is Robert Morris Dowd, my present address is 6061 Parish Avenue, New Orleans, Louisiana; I am presently Assistant Professor of Maternity and Child Health and Family Health and Population Dynamics at the School of Public Health and Tropical Medicine at Tulane University.

Q. Now in addition do you hold a special appointment somewhere? A. Yes, sir, a great many of them.

Q. Are you appointed by the Governor to any committees? A. Yes, sir. Would you like for me to give them to you?

Q. Yes, please, tell us generally what your background is. A. In general committees, I am currently a member of the Louisiana Mental Health Planning Council, in fact, I am the Vice President of it; I am currently a member of the (T. 29) Louisiana Mental Health Association, the Committee on Mental Health Centers, I am a member of the Louisiana Psychiatric Association and up until just recently I was a member of the Juvenile Delinquency Committee of the Louisiana State Crime Commission or the Commission on Law Enforcement and administration of Criminal Justice; my committee was just recently disbanded and I have received a citation from the Governor for outstanding service to the State of Louisiana dealing with these kind of problems.

Q. Have you had any particular employment as a professional consultant for Orleans's Parish with respect to sex education? A. Yes, sir. During the past three years in Louisiana I have served as Director of Family Life and Sex Education of Orleans's Parish in the public school system, I have also served as an adjunct to the Assistant Professor of Maternity and Child Health and a clinical assistant professor of Psychiatry and Neurology.

(The Court) Are you a medical doctor?

(The Witness) No, sir.

(The Court) You are not a psychiatrist?

(The Witness) Would you like my educational background?

(T. 30) (The Court) Yes.

(Mr. Smith) I was going to ask him that next question.

Q. (Mr. Smith) Tell us what degrees and what educational institutions or universities you have attended and the degrees you hold. A. Yes, sir. I have a Bachelor of Arts degree in Philosophy from the University of Buffalo, I have a Master of Education degree from the University of Buffalo and I have a Master of Arts degree from the State University of New York at Buffalo, which is the same university but a new name, I have a doctorate in education degree from the State University of New York at Buffalo and I have a Master of Public Health degree in family health and population dynamics from Tulane University School of Public Health and Tropical Medicine.

Q. As a member of the Louisiana Psychiatric Association, are you then permitted to counsel with patients? A. Yes. Up until July 1st I was a full time member of Dr. Robert East's group practice in psychiatry in Tulane University, in the Department of Psychiatry, and as a member of that group practice I did mainly marital therapy and I also taught human sexuality and marital therapy to the (T. 31) medical students and psychiatric residents.

Q. In connection with those duties, sir, did you have occasion to deal with people regarding their reactions to matters depicting nudity and such? A. Yes, sir, I did.

Q. Is this in your professional work? A. Yes, and I still do.

Q. In what context, would you please tell us? A. Well, currently I am in the family planning unit of Tulane University and I am looking at the psychiatric aspects of family planning, but a great many of these aspects deal with

human sexuality, I have also maintained a marital therapy practice and take a limited number of patients referred to me by either psychiatrists or by obstetricians in the New Orleans area.

Q. And when you say you had medical education, you were teaching medical students on this aspect of it? A. Yes, sir.

Q. What was your relationship in that regard, sir? A. Well, this was a course instituted approximately five years ago for medical students at Tulane and is one of approximately five of these types of courses around the country. And we really felt that both medical students and (T. 32) also graduate students in school of education, school of social work on the main campus of Tulane needed to know more about human sexuality.

Q. What was the purpose behind that thesis? A. That they were not well equipped to deal with problems in the community.

Q. Now, Doctor, did you have occasion to or have you in connection with your work in this regard done any studies or have you had periodical data upon which you traditionally rely in the state of your practice and profession? A. Yes, I have.

Q. Have you been able to make certain observations regarding the reaction of people to prurient display of nudity or sex? A. A great many of them.

Q. Have your observations been either the same as or comparable to the conclusions that you read regarding periodical studies which you traditionally rely upon in the pursuit of your profession? A. Yes.

(The Court) That is a pretty broad question.

(Mr. Smith) Well, it is difficult to—

(T. 33) (The Court) I don't know how that compares to what other studies are, and so forth.

(Mr. Smith) Your Honor, I merely wanted to show the witness' familiarity with some material—

(The Court) Familiar with the general writings in his field I suppose that's what you're really asking?

(Mr. Smith) Yes, your Honor.

(The Court) All right. I assume they are not unanimous in their same views, so we can't agree with all of them.

(Mr. Smith) No, sir. But I would then offer the Doctor, your Honor, as a witness to testify regarding the prurient appeal aspect as well as the social value aspect traditionally.

(The Court) All right.

Q. (Mr. Smith) Doctor, you have viewed either in the courtroom or at facilities made available to you the two movies that were displayed entitled something about "It all comes out in the end" and "Magic Mirror", is that correct? A. Yes, sir.

Q. And do you have an opinion, sir, as to whether those two movies would appeal to the average adult person's prurient interest in sex, that is to say, the sick or morbid (T. 34) in sex, do you have an opinion? A. You are asking me if it would appeal to a sick or morbid person?

Q. Do you have an opinion as to whether it would appeal to a sick or morbid person? A. Yes, I do.

Q. What is your opinion, Doctor? A. If I understand the question properly, you are asking me, it seems as though

contained within your question you are asking me if the average person is morbid or sick, could you repeat that again?

Q. No. I say does the movie, do you have an opinion as to whether the two movies you have seendisplayed have an appeal to the average adult's prurient interest in sex? A. No, sir.

Q. Prurient is defined as sick or morbid interest in sex. A. I do have an opinion. My opinion is that it would not.

Q. And why do you say it would not, sir? What interest in sex would it appeal to? A. I just simply don't believe that the average normal American adult has a prurient in sex. I think that if the average American adult walked into one of these (T. 35) theatres and sees a movie such as this, that he is exhibiting a normal healthy sexual interest rather than a prurient or morbid or sick interest.

Q. Doctor, after viewing these movies do you have an opinion as to whether these movies, consider all possible uses, consider they are in a public theatre, the type that has been described and testified to, would have any values to society? A. Yes, sir.

Q. And what is your opinion? A. Well, I have several opinions about that.

Q. Well, please state them. A. I feel that many normal healthy American adults have a great many fears about their own sexuality, they have a great curiosity about other forms of sexuality perhaps and they in general consider the question, am I normal, they are always asking themselves am I normal. Now I am not basing this on expert sophisticated opinions of my own but rather those feelings I have derived from a great many patients and also from a vast sample of persons here in the south that I have surveyed. These people

are healthy and curious about sexual activity and they do have fears about their own human sexuality, and to go to a movie this (T. 36) I would feel would help to eliminate some of those fears. For instance, if we are referring to the movies that we saw yesterday—

Q. Those two movies, yes, sir. A. It seems to me the person might have some, let's say, a person who was normal and healthy, he has some fears back there somewhere that he might be a homosexual and he might go into a movie such as this and see that depiction of the homosexual and say my God, I am not like that, I don't want to be like that, and so forth, or he might say, my God, I'm like that and go seek help. So the movie might get him to come to a professional and to seek help. Also women have fears about their breasts being a normal size or abnormal size, do they have more pubic hair or less than others, and so do males. Of course, the last movie wouldn't have helped any.

(The Court) I was going to say—

(The Witness) Well, I am talking about these kind of movies in general. I think this kind of thing helps to eliminate fears, it helps to satisfy curiosity about sexual matters. I am well read in the literature and being so I can quote probably in the Presidential Commission that (T. 37) approximately 84 percent of all men and 69 percent of all women in the country have exposed themselves voluntarily to this kind of material, and I can't pronounce this man's name correctly—

Q. Anashia— A. Anashia, I think that's right, he is from Johns Hopkins, he found a little bit higher figure, I think it was 92 percent males and 70 percent of the females, and there's another study, I can't recall the man's name, but which is found on page 119 of the report, that describes the survey of several hundred middle class men and women, that 84 percent of these reported they had voluntarily taken a look at these kind of depictions, and I'm seeing more and

more of the couples going to these theatres, married couples, and so forth. I think personally these movies appeal to the normal American adult, and I don't think it is a prurient interest, I think it is a healthy interest in sex.

(Mr. Smith) No further questions.

(T. 38) CROSS EXAMINATION

By Mr. Moran:

Q. Is it your opinion, sir, that the movie that you saw yesterday depicted normal sexual activity? **A.** I think that normal sexual activity from what we know from all studies in this country and from the Kinsey Report and from every other kind of report we have in this field that normal sexual activity encompasses a wide range of activities and I didn't see any activities in the movies that was beyond the normal range of human sexual activity.

Q. As you view it, is that right, sir? **A.** Do you mean as I view the movie or as I view normal human sexual activity?

Q. Yes, sir, normal sexual activity. **A.** As I know it to be from dealing in this area with a great many patients and with a great many people at large.

Q. All right, sir. Then your opinion primarily is based on information gathered from people that you have treated or come in contact with in your profession? **A.** No, sir. The greatest part of my information comes from surveys of citizens of the Southern community and from observations made rather than from the patients. The patients would constitute perhaps a third of that kind (T. 39) of information.

Q. And your surveys were made by other people, is that correct? **A.** No, sir. The surveys were made by myself.

Q. You made surveys throughout the south on sexual activities? A. On sexual attitudes.

Q. Sexual attitudes? A. The parents' feelings about what kind of things children should learn, and this kind of thing, yes, sir.

Q. Have you conducted such a survey in the metropolitan Atlanta area, sir? A. No, sir.

Q. All right. A. The best I have done in that respect was to sit down approximately two years ago with your people on Peachtree in the educational television department and speak with them about the need for this kind of educational material here in Atlanta.

Q. Doctor, have you seen "Magic Mirror" before yesterday, sir? A. No, I hadn't.

(T. 40) Q. Then you didn't see all of that film, did you? A. No, sir, I haven't.

Q. You saw only half of it? A. Right.

Q. Did you see "It all comes out in the end" prior to yesterday, sir? A. No, sir, I haven't.

Q. Now when were you employed or retained to come to Atlanta to testify in this matter, sir? A. I believe the day before yesterday I came here. I would say yesterday or the day before that.

Q. Actually, you came to testify in relation to these two films that you had never seen before, isn't that correct, sir? A. I came to look at the films and give an opinion, yes, sir.

Q. Now have you testified in cases such as this in the past, sir? A. No, sir, I have never testified in a case involving a film.

Q. Have you testified in cases involving obscenity? A. Yes, sir, I have in two cases.

(T. 41) Q. Where were those two cases? A. One in Federal Court in New Orleans and the other was in Memphis. The one in New Orleans is still unresolved and the one in Memphis, the material I have viewed was found to be not obscene.

Q. Who retained you in those two cases, sir, which counsel was involved? A. Mr. Smith retained me for the Memphis case and Mr. Jack Peebles in New Orleans.

Q. You were retained or paid to come to Atlanta to testify, is that correct? A. Yes, sir.

Q. There seems to be, and you correct me if I am wrong, an inference from your testimony that sex films could have a therapeutic value, is that your attitude, sir? A. I am not going to make this like a doctor-patient value but rather a therapeutic value for the community at large, yes, sir.

Q. The entire community at large? A. Or that portion of the community that would like to see this kind of material or has curiosity about this (T. 42) kind of material.

Q. Do you think, sir, in your opinion that such a film would stimulate an interest or curiosity in sex? A. I would hope that the normal healthy American male or female would be sexually stimulated by sexual material. And unfortunately I believe these two films here were sort of a spoof on sex, the "Magic Mirror" was almost an anti-sex movie.

Q. It would be more anti-sex than it would be therapeutic, wouldn't it? A. It certainly was far from what I call unsexual material, unsexual material as I am accustomed to talking about in these kind of movies.

Q: That material would not then reflect in the films that you saw yesterday, would they, as you define sexual material?

A: The sexual movie as I say to me was a spoof on sex rather than being hard sex.

Q: And for what purpose was the sex film made, sir? A: Personally I would get some amusement out of a film like that at the beginning, and I think complete boredom by the time I had gotten to the end of that first reel. The only value I can see in this kind of film would be perhaps some educational value for persons who are curious (T. 43) about this kind of thing and perhaps some amusement value.

Q: Then it would appeal to persons who had curiosity, for example, about lesbianism? A: I think a great many American males have curiosity about lesbianism and this might help to resolve some of their curiosity.

Q: Then would you say that a scene such as the television repair man and the young lady, where they covered each other with some substance, either shaving cream or whipped cream or something that had a therapeutic value, would resolve some normal person's question as to what sex would be like covered with shaving cream or whipping cream? A: Well, I would like to respond to you in saying that in matters of fact, you know, there is no forte, just fact, nothing was happening there except the man's penis was in a limp stage and there was no real sexual activity going on, it was sort of like a wrestling match, and in the second set of scenes it was something like a modern dance troupe, but it certainly wasn't sexual activity.

Q: I will ask you then, Doctor, basically a hypothetical question. Should you walk into a bedroom in your house or anyone else's house and you saw a nude female covered with shaving cream or whatever the substance was and a nude male who had so adorned himself on top of her nude, (T. 44) between her legs, going up and down, she moving and

groaning, would you then suggest that this was wrestling match as opposed to intercourse? A. Since this is a hypothetical question I cannot answer instantaneously until I had further evidence.

Q. Then you would walk over and get down on one knee and say if there is penetration I'll blow your brains out, if there is not I will forgive you for simulating it?

(The Court) I don't understand that question.

(The Witness) You've lost me there.

Q. (Mr. Moran) What I have reference to, for example, you walked in and found your daughter, if you have a daughter, hypothetically in bed nude with a man on top of her who was also nude between her legs, going up and down, she moaning and groaning and saying how good it was, when you in your professional capacity evaluating the average person, would stand there and toss over in your mind whether this is a simulated act or not? A. Well, referring to my daughter, I could only say that she should not be in bed with anyone naked and I draw my conclusions right there. But if you are asking me about the movie and about the simulated sexual act, I am personally familiar enough with these kind of movies to know that when (T. 45) they do have these sexual acts in the movies, when it is factual rather than imagined, that these camera men who make these movies very often take a picture of the scrotum sac, if there is ejaculation will tend to shrink, and they will do several other things that will demonstrate that there actually is sexual activity taking place. I did not say I went to medical school but I had long enough to take anatomy and a few other things, and I happen to know that intercourse in at least a great portion of those movies was impossible; that when a man was positioned by the woman with her legs spread apart, that it was just simply impossible that intercourse was taking place.

Q. Doctor, have you had a chance to observe some of the latest works of allegedly medical texts showing intercourse in 98 different positions? A. I certainly have.

Q. They are the same depiction? A. When the actual intercourse is shown the male has a rigid or erect penis. But the males in these films had very limp penises, especially in that first movie. And other than that I did not observe any sexual activity in these films.

(T. 46) Q. Sexual activity in your judgment would have to either have, one, an erect penis, or two, a wordly view of the insertion in your judgment for intercourse to be taking place, before you would determine it was sexual intercourse, is that right? A. Yes, sir.

Q. All right. What moralistic or educational value would the scene that you just described have on the average person, that is, a close-up shot of the scrotum expanding or contracting during ejaculation, do you think this is a great phenomena that everyone should be familiar with? A. I am struck by the vast interest by the average person in the reproductive anatomy and physiology because to me it really isn't that appealing. But when Masters and Johnson came out with their first book it was simply a book filled with all kinds of physiological comments about what happens during various aspects of intercourse and/or examples, it was the best seller. Now apparently there are a vast number of people who will find this interesting reading. I personally did not.

Q. For curious people, isn't that right? (T. 47) A. For curious people.

Q. You don't consider yourself, sir, an average person educationally speaking, do you? A. No, although I consider myself very much with the contemporary community standards because I do participate in a great many areas of the community and get to know people from all walks of life.

Q. And basically your associations are with persons in the medical profession or either patients, isn't that correct? A. And Colleagues because I am a professor, right.

Q. Now can you honestly state, sir, that the orgy scenes that were shown yesterday in these two films would contribute to the welfare of this community? A. I think it depends on your moral judgments about some other things. For instance, if a couple was curious about wife swapping or something like this and they could substitute some fantasy by seeing a film such as this rather than the actual thing, I think this might be good for the community.

Q. Would you consider a couple, sir, who was considering wife swapping, a normal average couple? A. You didn't ask me about normal average. You said (T. 48) would it be good for the community, and as far as I am concerned to say one's soul is good for the community.

Q. But would you consider a person who was considering wife swapping a normal average person? A. No, sir.

Q. Then to satisfy this person would be an abnormal person with abnormal desires, isn't that correct, sir? A. I'm not sure. It might possibly be abnormal, yes, sir.

Q. All right. Now let's take the converse, Mr. Witness, if we may. Isn't it possible that such a scene could encourage someone who had not considered wife swapping to experiment in this field? A. No, I don't believe so.

Q. You don't think that? A. No, I don't because I think that in all of these sexual movies that if you see these things I think they serve more as a fantasy substitute than they do to encourage activity. We also know that the life of the action of these movies and books is around four hours, that they don't stimulate much beyond four hours.

Q. If they did extend even to four hours, the male (T. 49) would lose characteristics that you insist are essential elements in participating of the sex act? A. I am talking about psychological stimulation, right.

Q. I believe you testified that these films were a spoof I think is the word you used. A. The second film was essentially I felt sort of a comedy, you know.

Q. To you it was a humorous film as opposed to a serious sex work? A. Yes, sir. In other words, I am familiar with sexual films around the country, so-called hard core films, and this film just simply doesn't meet the standard as far as I am concerned.

Q. In your opinion were these pictures made and produced for educational purposes or were they made and produced to exhibit to the public?

(Mr. Smith) Objection, Your Honor. There is no element of any tests.

(Mr. Moran) I was just asking him on cross-examination.

(The Court) I will let him answer for whatever it is worth.

(T. 50) (The Witness) I feel that the answer has been given already in the sense of the mentioning of encyclopedias or any overpriced anything. Certainly these films are developed and I feel they are developed simply because your major film producers want it this way; in other words, I don't feel the people that made these films started this, I think the Hollywood producers started this.

Q. For what purpose would you say they produced these films, for educational purposes or medical purposes or therapeutic purposes or appeal to the public interest in sex? A. For entertainment, to try to draw in a crowd, to fill the theatre up.

Q. Do you consider this entertainment, sir, two lesbians on the bed making love to one another? A. They are paying \$5.00 or \$3.00 for something.

Q. Would you consider entertainment a nude female in the act of fellatio upon a male whether simulated or actual penetration shown, would that be entertainment, sir? A. Looking at this kind of material has provided entertainment for a great many hundreds of years in one form or another.

Q. Do you presume by the number of people who buy (T. 51) admission to theatres that it is entertaining to each of these people or would you presume some are there because of a morbid curiosity in sex? A. I would like to answer that without offending anyone. But I think the person who goes into this kind of movie, who goes in offensively to the movie, in other words, who is there to make trouble rather than to be entertained, I think this is morbid.

Q. Then if the person was not entertained by either the films that you saw yesterday, you would say that he was an inoffensive person seeking to cause trouble? A. No, sir.

Q. They have to be entertained by these people or they are not normal? A. No, sir. I told you that I was bored by this film after awhile.

Q. This film didn't contribute anything to your welfare, did it? A. No, sir, and it didn't stimulate me either as far as that goes.

Q. I will ask you, Mr. Witness, if on yesterday, if you had not presumed it to be offensive to this Court, that you would have walked out of this film and stayed outside (T. 52) the hall until it was shown?

(Mr. Smith) Are you presuming if he had not been intended to be a witness?

(Mr. Moran) Yes.

(The Witness) I can answer that very simply; that you have already pointed out, that I am here as an expert witness and paid to do a job, and I certainly would sit through the film and watch it.

Q. (Mr. Moran) Would you pay \$3.00 to see either one of these films? A. No, sir.

Q. \$2.95? A. No, sir.

(Mr. Moran) That is all.

REDIRECT EXAMINATION

By Mr. Smith:

Q. Doctor, just to clear up a point, when did I first call you about testifying here in this case? A. I am trying to remember—

(The Court) Is that significant?

(The Witness) Monday morning or something.

(Mr. Smith) I would like to just—

(The Witness) I think you woke me up Monday morning.

(T. 53) (Mr. Smith) Did I advise you what I understood the films contained? A. Yes, sir, you did.

Q. What did I ask you with reference to that and you remember calling me back later? A. I think you asked me

later to think about it and if I had any thoughts about this kind of material, and I am sure you asked me with the knowledge that I had been obtaining on some of these films to get some ideas about them.

Q. All right. And when you came here it was understood that you would not testify if you had a different opinion, the films were other than as I described? A. I think this is well understood, right.

(Mr. Smith) No further questions.

EXAMINATION

By the Court:

Q. I want to ask the Doctor a few questions if I may, at the risk of being misunderstood. I am very curious about one thing. You might or might not have a view about it, I don't think this has anything to do with any ruling I should make, but at the end of the film that we saw yesterday called "Magic Mirror" there was a scene where a (T. 54) young man was shot by a police officer and there was this dramatic gushing of blood and he is killed, there was no emotion shown on the part of the girl as to the death and all the rest of the rather blase approach towards it, what relationship does that have, what does that do to, if you have an opinion, viewer, does that exacerbate sex feelings or what, what does it do? A. By violence, not only in any film, but as far as I am concerned they don't need to do that kind of thing, but at the same time what I am so taken back by is that this is a film apparently being shown in an adult theatre restricted to persons who want to pay their \$3.00, in other words, they choose to go there, and we choose to do a lot of things in life and then we either get taken or we don't. What I really object to, a few weeks ago, four weeks ago or so there was a Life Magazine that comes into my home, that comes into most everyone's home, showing heads lopped off or who had

committed Hari Kari, just grizzly, ghastly things that to me are obscene and should not be permitted to intrude in my home, and this I don't approve of even in these movies or in Life Magazine or anywhere else. Apparently our society is filled with this and it does intrude on us.

Q. Well, this clearly, the violent cause of death and (T. 55) the sight of death concept which is said to be filled with all sorts of psychiatric means thrust into this, but this movie, would you perceive that to be for the purpose of making or arousing greater reaction on the part of the viewer? A. I can't imagine that it would and therefore I can't imagine why they put it in. This seems to be true of a lot of these sexually oriented magazines and things that they do, or books, the printed books, they will have a death at the end and I don't really know why. I have never met any patients who were abnormal that were attracted by this kind of thing, so I don't know who they are trying to attract.

(The Court) Thank you very much, Doctor. Are there any other questions?

(Mr. Smith) No.

(Mr. Moran) No further questions.

(The Court) Gentlemen, you will hear from me sometime during the next week or so.

(Mr. Smith) Your Honor, technically I then renew my motion to dismiss. I don't know whether the prosecution would have any rebuttal testimony.

(Mr. Moran) No, sir.

(The Court) Thank you, gentlemen.

Plaintiff's Exhibits 1



Plaintiffs' Exhibit 2

The foregoing transcript of the proceedings, together with the exhibits, is true and correct and filed as the record in the above stated case.

This 11th day of May, 1971

RED BUSHNELL

Attorney General of the State of Florida

State of Florida



PARIS ADULT THEATRE, ST. LOUIS

Plaintiffs' Exhibit 3



GEORGIA, FULTON COUNTY.

The foregoing transcript of the proceedings, consisting of pages 1 through 56, together with the attached exhibits, is true and correct and filed as the record in the above stated case.

This 11th day of May, 1971.

FRED BURRELI

Fulton Superior Court

Atlanta Judicial Circuit.

Filed for Record 25 day of May, 1971

Recorded May 26, 1971

**STATE OF GEORGIA,
COUNTY OF FULTON**

LEWIS R. SLATON, AS DISTRICT

ATTORNEY, ATLANTA

JUDICIAL CIRCUIT, AND

HINSON McAULIFFE, AS

SOLICITOR GENERAL OF THE

CRIMINAL COURT OF FULTON COUNTY,

APPELLANTS,

V.

PARIS ADULT THEATRE I, ET AL.,

Appellees.

D. FREEMAN BUTON

Attorney for Appellants

(Delivered in the Court Room)

LEWIS R. SLATON AS DISTRICT ATTORNEY,
ATLANTA JUDICIAL CIRCUIT, AND
HINSON McAULIFFE, AS
SOLICITOR GENERAL OF THE
CRIMINAL COURT OF FULTON COUNTY,
APPELLANTS,

V.

PARIS ADULT THEATRE II, ET AL.,
APPELLEES.

I hereby certify that the foregoing pages, hereto attached, contain the original Transcript of Proceedings, filed by the Court Reporter on May 25, 1971, in the above stated cases.

I further certify that the Court Reporter filed an identical copy, which is of file in this office.

I further certify that under separate cover is transmitted to the Supreme Court of Georgia the Notice of Appeal, Amendment to Notice of Appeal and the Transcript of Record, as required to be transmitted. The foregoing, together with the Transcript of Proceedings, filed by the Court Reporter, is the entire record on appeal, as appears from the records of file in this office.

Witness my signature and the seal of Court, this 1 day of June, 1971.

Lora Paschal
Deputy Clerk, Superior Court
Fulton County, Georgia.

**IN THE SUPREME COURT OF THE
STATE OF GEORGIA**

Case No. 26631

LEWIS R. SLATON,

As District Attorney, et al

Appellants,

v.

PARIS ADULT THEATRE I, et al

Appellees.

STIPULATION OF RECORD

It is hereby stipulated that the cases of LEWIS R. SLATON, et al, v. PARIS ADULT THEATRE I, et al, Fulton Superior Court Case No. B-61298, and LEWIS R. SLATON, et al, v. PARIS ADULT THEATRE II, et al, Fulton Superior Court Case No. B-61299, were tried jointly in the Superior Court of Fulton County and that counsel for each and all of the parties stipulated and agreed to waive a trial by jury and a preliminary hearing in order that the judgment and order entered by the trial judge would be a final order and judgment in the said cases.

THOMAS E. MORAN

W. BAER ENDICTOR

Attorneys for Appellants

(Plaintiffs in the Trial Court)

ROBERT E. SMITH

D. FREEMAN HUTTON

Attorneys for Appellees.

(Defendants in the Trial Court)

**IN THE SUPREME COURT
OF THE STATE OF GEORGIA**

Case No. 26631

LEWIS R. SLATON,
As District Attorney, et al
Appellants,

v.

PARIS ADULT THEATRE, I, et al,
Appellees.

ENUMERATION OF ERRORS

SLATON, et al, vs. PARIS ADULT THEATRE I, et al:

1. The Court erred in finding and declaring the 16mm motion picture film entitled "IT ALL COMES OUT IN THE END" not obscene.
2. The Court erred in refusing to enjoin the Defendants from exhibiting the said motion picture film entitled "IT ALL COMES OUT IN THE END."
3. The Court erred in dismissing Appellants complaint against the Defendants.

SLATON, et al, v. PARIS ADULT THEATRE II, et al:

4. The Court erred in finding and declaring the 16mm motion picture film entitled "MAGIC MIRROR" not obscene.
5. The Court erred in refusing to enjoin the Defendants from exhibiting said motion picture film entitled "MAGIC MIRROR."
6. The Court erred in dismissing Appellants complaint against the Defendants.

Each of the aforesaid cases is equitable in nature over which the Supreme Court of Georgia has exclusive appellant jurisdiction.

THOMAS E. MORAN

W. BAER ENDICTOR
Attorneys for Appellants.

(Certificate of Service omitted in printing)

* * * * *

Supreme Court of the State of Georgia
Clerk's Office Atlanta
March 21, 1972.

I, Joline B. Williams, Clerk of the Supreme Court of Georgia, do hereby certify that the foregoing pages, consecutively numbered 1 through 138, hereto attached, contain a true and complete copy of the record, and the enclosed two cannisters of film are those filed in the Supreme Court of Georgia in Case No. 26631, Slaton, District Attorney, et al v. Paris Adult Theatre I et al, as appears from the records and files in this office.

Witness my signature and the seal of the said court hereto affixed the day and year above written.

Joline B. Williams
Clerk.
